IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICITON

FERA APEAL NO.55 OF 2007

Union of India .. Appellant.

Versus

M/s.Touchstone Worldwide & ors. .. Respondents.

Mr.R.V. Desai, senior counsel with Mr.A.S. Rao, Mr.A.H. Bhatija & Mrs.S.V. Bharucha for the appellant.

Mr.Ashok Patankar for respondent No.2

CORAM : F.I. REBELLO &
J.P. DEVADHAR, JJ.

DATED : 28TH SEPTEMBER, 2007.

P.C. :

1. The question of law as raised in this appeal is, "Whether it was open to the Tribunal, considering explanation to Section 68 of the Foreign Exchange Regulation Act, 1973, to set aside the penalty imposed on the parties ?".

2. From the impugned order, we find that the learned Tribunal in paragraph 11 of its order proceeded on the footing that the firm is an Association of persons relying on the judgment of Calcutta High Court in Tarak Nath V/s. Government of India {AIR 1975 Calcutta 337) and consequently held that as the firm is a compendium name of all the partners and therefore liability is joint,

unless some partner can be found at fault on the particular facts of a case.

3. Explanation to Section 68 read as under:

> "For the purposes of this Section - (i) "company" means any body corporate and includes a firm or other association of individuals; and (ii) "director, in relation to a firm, means a partner in the firm."

. The Legislature has, therefore, considering Section 68 placed a firm, in the same position as a company and the partners in the same position as directors. In other words, both the firm and the partners can be held to be liable and penalty imposed in accordance with law. Considering the law, the general principle which the Tribunal has relied upon would not be applicable in case there are allegations of contravention of the provisions of FERA, 1973.

4. In the instant case, we, however, find that the proceedings for adjudication were initiated for contravening the provisions of Section 18(3). Penalty of Rs.10,00,000/- has been imposed on the firm. Appeal preferred by the Appellant before this

Court has been dismissed. The Tribunal in its order has observed as under:

> "Therefore, in the circumstances of this case, separate penalty on partner is not required and it will be appropriate to quash and set aside it."

5. It is no doubt true that the Tribunal partially proceeded on the assumption that once penalty has been imposed on the firm, no penalty can be imposed on the partners. As we have pointed, this would not be the correct position in law.

6. However, on the facts and circumstances, as the penalty of Rs.10,00,000/- has been imposed on the firm, we do not think that the ultimate conclusion arrived at by the Tribunal, on the facts of the case, not imposing penalty on the partners suffers from an error of law.

7. Considering the above, the question of law as framed would not arise. Hence, the appeal is dismissed.

(F.I. REBELLO, J.)

(J.P. DEVADHAR, J.)